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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH YAKSHIN,

Defendant and Appellant.

C080272

(Super. Ct. No. 14F07232)

Defendant Joseph Yakshin pleaded no contest to various charges related to driving under the influence, including gross vehicular manslaughter while intoxicated. (Pen. Code, § 191.5, subd. (a).) He contends his conviction for driving under the influence causing bodily injury must be reversed because it is a lesser included offense of his gross vehicular manslaughter conviction. (Veh. Code, § 23153, subd. (a).) Defendant further contends reversal of the Vehicle Code section 23153 conviction entitles him to additional presentence custody credit and reduced fees. Because defendant's contentions challenge the validity of his plea and he lacks a certificate of probable cause, we will dismiss his appeal.

FACTUAL AND PROCEDURAL BACKGROUND

On September 14, 2014, defendant went to a party at his cousin's house and drank beers and vodka. When defendant decided to leave early the next morning, two of his friends tried to convince him not to drive because he was intoxicated. Nonetheless, defendant drove away in his minivan. Defendant's driver's license was suspended at the time.

Defendant ran a red light while driving at 76 miles per hour in a 40-mile-per-hour zone. Approximately 22 seconds later, he ran another red light and collided with a car driven by Dorrance Byrd, with passengers Deadra Griffin (Byrd's wife), Gilda May (Griffin's sister), and Gabriel May (Griffin's nephew). As a result of the collision, Griffin died, Byrd suffered a fractured tailbone, Gilda suffered fractured ribs and a bruised leg, and Gabriel suffered injuries that did not amount to great bodily injury.

Defendant left the scene without exchanging his information or assisting the victims. He went to his apartment that was only a few blocks away. The next day, defendant called the police, reported his minivan as stolen, and said he had not been driving the vehicle at the time of the collision. Witnesses identified defendant as the driver.

Defendant pleaded no contest to gross vehicular manslaughter of Griffin while intoxicated (count one; Pen. Code, § 191.5, subd. (a)), driving under the influence and proximately causing bodily injury to Byrd, Gabriel, and Gilda (count two; Veh. Code, § 23153, subd. (a)), failing to provide his information or render assistance to victims after an accident (count three; Veh. Code, § 20001, subd. (b)(2)), falsely reporting a felony to police (count four; Pen. Code, § 148.5, subd. (a)), and driving with a suspended license (count five; Veh. Code, § 14601.1, subd. (a)). With respect to count one, defendant also admitted to fleeing the scene (Veh. Code, § 20001, subd. (c)), and proximately causing bodily injury to more than one victim (Griffin and Gabriel) (Pen. Code, § 191.5, subd.

(a); Veh. Code, § 23558). With respect to count two, defendant also admitted to personally inflicting great bodily injury on Byrd, Griffin, and Gilda (Pen. Code, § 12022.7, subd. (a)), and proximately causing bodily injury to more than one victim (Byrd, Gilda, and Gabriel) (Veh. Code, § 23558).

The trial court sentenced defendant to serve an aggregate term of 16 years' imprisonment, as follows: on count one, the upper term of 10 years plus 5 years for the enhancement for fleeing the scene (Veh. Code, § 20001, subd. (c)) plus one year for proximately causing bodily injury to more than one victim (Veh. Code, § 23558); on count two, a concurrent midterm of two years plus three years for the great bodily injury enhancement (Pen. Code, § 12022.7, subd. (a)); on count three, a stayed three years (Pen. Code, § 654); on count four, a concurrent six months; and on count five, a stayed sentence.

Defendant's request for a certificate of probable cause was denied.

DISCUSSION

Defendant contends his conviction for driving under the influence causing bodily injury (Veh. Code, § 23153, subd. (a)) must be reversed because it is a lesser included offense of vehicular manslaughter (Pen. Code, § 191.5). The People contend defendant's appeal must be dismissed because he failed to obtain a certificate of probable cause.

A defendant who pleads no contest generally may not appeal a judgment of conviction without obtaining from the trial court a certificate of probable cause, unless he or she is challenging a search and seizure ruling or post-plea sentencing issues. (Pen. Code, § 1237.5, subd. (a); Cal. Rules of Court, rule 8.304(b); see also *People v. Mendez* (1999) 19 Cal.4th 1084, 1095-1096.) To determine whether Penal Code section 1237.5 applies, "the critical inquiry is whether a challenge to the sentence is *in substance* a challenge to the validity of the plea, thus rendering the appeal subject to the requirements of section 1237.5." (*People v. Panizzon* (1996) 13 Cal.4th 68, 76.)

Courts have made clear a defendant is challenging the validity of his or her plea when he or she challenges a conviction as a lesser included offense. (*People v. Valenzuela* (1993) 14 Cal.App.4th 837, 840; see also *People v. Jones* (1995) 33 Cal.App.4th 1087, 1093 [“A defendant suffers a conviction when he or she pleads guilty”].) Absent a certificate of probable cause, we need not explore the propriety of defendant’s plea.

Given our decision to dismiss defendant’s contentions regarding his conviction of driving under the influence and proximately causing bodily injury, we need not reach defendant’s contentions regarding fees and presentence custody credits.

DISPOSITION

The appeal is dismissed.

_____/s/
HOCH, J.

We concur:

_____/s/
HULL, Acting P. J.

_____/s/
ROBIE, J.